

Campaigning for law reform to prohibit corporal punishment: Drafting prohibiting legislation

Summary Briefing 3 (June 2009)



Global Initiative to
**End All Corporal Punishment
of Children**

Legislation to prohibit corporal punishment should be drafted as soon as possible after reviewing current law, or an initial draft could be included at the end of the review report (see Briefing 2). The extent to which NGOs can be directly involved in drafting new legislation for presentation to Parliament will depend on the particular process of law reform in each country, but understanding exactly what is required will ensure that reform really does achieve prohibition. And drafting and publicising concrete proposals for new legislation is an important and useful step when initiating advocacy for law reform from scratch. It also ensures that you have proposals for changes in legislation ready to hand to enable you to respond to opportunities as they arise.

What needs to happen

The two essential components of law reform to achieve prohibition are removing (repealing) all defences and authorisations of corporal punishment and enacting explicit prohibition of corporal punishment and other cruel and degrading punishment.

(i) Removing (repealing) all defences and authorisations of corporal punishment

The review of existing law will have resulted in a comprehensive list of all legal provisions authorising corporal punishment and all legal defences for its use, including precise legal references – the name of the law, the number of the article, and the text (see Briefing 2). These are the legal provisions which must be repealed.

Once all authorisations and defences for corporal punishment are removed, the basic criminal law on assault will apply to children. This means that any assault, even in the context of punishment or “discipline”, will be unlawful. Children, like adults, will be protected by the criminal law wherever they are and whoever the perpetrator. But to send a clear message, explicit prohibition of corporal punishment should also be stated in specific legislation applying to the family, juvenile justice, education, child protection and so on.

(ii) Enacting explicit prohibition of corporal punishment and other cruel and degrading punishment

Enacting explicit prohibition involves deciding whether to amend existing laws or propose new legislation, or both, and getting the language right.

Amending existing law and enacting new legislation

Removal of legal defences and authorisations necessitates amending existing legislation. But simply removing the provisions is a “silent” reform and does not send a clear message that corporal punishment is no longer lawful. The law must be clear and explicit so that adults and courts cannot misinterpret it. Prohibition is achieved when the repeal of the defence is accompanied by the

insertion of a statement which makes it clear that assault can no longer be justified as punishment or correction.

Where there are no defences to be repealed, new legislation must be enacted to explicitly prohibit all corporal punishment. Ideally, prohibition is included in legislation which recognises children's rights wherever they are – home, school, penal system, alternative care settings, workplace – by inserting an article into existing child law, or by enacting a new law specifically to achieve prohibition.

Some countries which have achieved prohibition have enacted a new law prohibiting all corporal punishment and other cruel and degrading punishment, and included within this new law a clause amending and/or repealing other legal provisions on corporal punishment. The important thing is to ensure that no loopholes are left which could be construed as allowing corporal punishment in any setting.

Getting the language right

The only way to ensure clear, uncompromising prohibition of all corporal punishment is to use clear, uncompromising language in legislation.

Because corporal punishment is almost universally accepted as a disciplinary measure in childrearing, it is not generally perceived as harmful, abusive or even violent. For this reason, legislation which prohibits “violence” or “inhuman or degrading treatment”, or which protects “physical integrity” or “personal honour and dignity”, does not do the job of prohibiting all corporal punishment. To explicitly prohibit corporal punishment, the law must use the words “corporal punishment”.

The terms “corporal punishment” and “physical punishment” have exactly the same meaning and are interchangeable. But prohibiting corporal punishment “which causes, or is likely to cause harm” misleadingly implies that there is a form or degree of corporal punishment that is not harmful, and the phrase should not be used. Law reform should aim to prohibit “corporal punishment and all other forms of cruel or degrading punishment”, reflecting the language in article 37 of the Convention on the Rights of the Child and in the Committee's General Comment No. 8.

Very occasionally, it appears that a country does not have words for “corporal punishment” in the language. In this case, a way should be found to make the law absolutely clear that provisions against violence, assault and humiliation apply in the context of disciplining children as in other contexts.

If a definition is considered necessary, this should reflect the definition of corporal punishment by the Committee on the Rights of the Child in General Comment No. 8 (2006), paragraph 11 (see Briefing 6).

Other summary briefings available:

- 1: Understanding the need for prohibition; 2: Reviewing current law*
- 4: Building a national strategy; 5: Working with Government and Parliament*
- 6: Using legal action and regional and international human rights mechanisms*
- 7: Key resources to support campaigning*

Further information at www.endcorporalpunishment.org, email info@endcorporalpunishment.org.